

No. 12540

United States
Court of Appeals
for the Ninth Circuit.

JACUZZI BROS., Incorporated, a Corporation,
Appellant,

vs.

BERKELEY PUMP COMPANY, a Corporation,
BERKELEY PUMP COMPANY, a Partner-
ship, and FRED A. CARPENTER, LANA L.
CARPENTER, F. F. STADELHOFFER, ES-
TELLE E. STADELHOFFER, JACK L.
CHAMBERS, WYNNIE T. CHAMBERS,
CLEMENS W. LAUFENBERG and MARIE
C. LAUFENBERG, Partners Associated in
Business under the Fictitious Name and Style
of Berkeley Pump Company,
Appellees.

SUPPLEMENTAL
Transcript of Record

Volume III
(Pages 623 to 665)

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Northern District of California,
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Appeal from the United States District Court
Northern District of California,
Southern Division.

In the United States District Court, Northern District of California, Southern Division

Civil Action No. 27905-G

JACUZZI BROS., INCORPORATED, a Corporation,

Plaintiff,

vs.

BERKELEY PUMP COMPANY, a Corporation,
BERKELEY PUMP COMPANY, a Partnership, and FRED A. CARPENTER, LANA L. CARPENTER, F. F. STADELHOFER, ESTELLE E. STADELHOFER, JACK L. CHAMBERS, WYNNIE T. CHAMBERS, CLEMENS W. LAUFENBERG and MARIE C. LAUFENBERG, Partners, Associated in Business Under the Fictitious Name and Style of BERKELEY PUMP COMPANY,

Defendants.

NOTICE OF TAKING DEPOSITION

To Jacuzzi Bros., Incorporated, a corporation, the plaintiff above named, and to Charles O. Bruce and Nathan G. Gray, its attorneys:

You and Each of You will please take notice that defendants in the above-entitled action will take the deposition, pursuant to the Federal Rules of Civil Procedure, of the following witness:

Davide Veronesi
Via Rivabella n.5
Bologna, Italy

before Violet Neuenburg, a notary public in and for the City and County of San Francisco, or some other qualified notary public, at the office of Mellin and Hanscom, 391 Sutter Street, San Francisco 8, California, at the hour of ten a.m. on Tuesday, May 3, 1949, and if not completed on that day, the taking of the same shall continue thereafter from day to day until fully completed.

MELLIN AND HANSCOM,

By /s/ LEROY HANSCOM,

Attorneys for Defendants.

Dated: April 30, 1949.

Affidavit of Service by Mail attached.

[Title of District Court and Cause.]

Be It Remembered, that commencing on Tuesday, the 3rd day of May, 1949, at 10:00 o'clock a.m., pursuant to Notice of Taking Deposition, hereto annexed, at the office of Messrs. Mellin and Hanscom, Suite 500, 391 Sutter Street, San Francisco, California, personally appeared before me, Violet Neuenburg, a notary public in and for the City and County of San Francisco, State of California.

DEPOSITION OF DAVIDE VERONESI

a witness called on behalf of the defendants herein.

CHARLES O. BRUCE, ESQUIRE, and

NATHAN G. GRAY, ESQUIRE,

Appeared as attorneys for the plaintiff; and

MELLIN and HANSCOM, represented by
OSCAR A. MELLIN, ESQUIRE, and
JACK E. HURSH, ESQUIRE,

Appeared as attorneys for the defendants. [1*]

The said witness, having been by me, through the interpreter, Camillo Marzo, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the notary public, after administering the oath to the witness, need not remain further during the taking of this deposition.

It was further stipulated that the said deposition should be recorded by Harold H. Hart and R. R. Roberson, competent official reporters and disinterested persons, and thereafter transcribed by them into typewriting, to be read to or by the said witness, who, after making such corrections therein as may be necessary, will subscribe the same.

It was further stipulated that all objections to questions propounded to the said witness shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

Mr. Mellin: May we stipulate that the notary may be excused?

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Gray: Yes. And we will have all the usual stipulations.

Mr. Mellin: Well, what are they?

Mr. Gray: Well, Mr. Hart, you have them all. That all objections are to be reserved until the time of trial, with [2] the exception as to the form of the question; and I think in view of the fact that there is to be an interpretation of his testimony, that probably he should sign and make corrections that are necessary.

Mr. Mellin: Anticipating that, we have arranged for a daily; and that will be all right with me. That is why we have asked for a daily on this.

Mr. Gray: It will be more convenient for us to waive it?

Mr. Mellin: It would be more convenient to him, because he is over here, and he wants to fly back to Italy right away.

Mr. Gray: Well, perhaps we will agree to waive his signature, because it would be a convenience to you not to have him sign the deposition. I am inclined to waive it.

Mr. Bruce: Normally—this may prove to be a somewhat important deposition; and I presume it is from your point of view; and he is here from Italy. I wouldn't want to waive it at this time. We can check that at the end of the deposition, and determine whether or not to waive it. What other stipulations have you entered into?

The Reporter: Objections reserved except as to the form of the question.

Mr. Mellin: And the stipulation excusing the notary.

Mr. Bruce: And that this gentleman, Mr. Marzo, is that it?

Mr. Mellin: Yes.

Mr. Bruce: That Mr. Marzo can act as the interpreter.

Mr. Mellin: He has been appointed by the court.

Mr. Bruce: Yes.

Mr. Mellin: Let the record show that Camillo Marzo—you have a copy of it—has——

Mr. Bruce: We will take your word for it.

Mr. Mellin: Mr. Hursh has a copy of it. It is pursuant to an order of court of yesterday, or whenever that date is.

(The interpreter, Camillo Marzo, was duly sworn by the notary public to correctly translate the questions from the English language into the Italian language, and the answers of the witness from the Italian language into the English language, and thereafter the notary public administered the statutory oath through the said interpreter to the witness.)

DAVIDE VERONESI

a witness called on behalf of the defendants, being first duly cautioned and sworn through the interpreter, Camillo Marzo, to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Deposition of Davide Veronesi.)

Direct Examination

By Mr. Mellin:

Q. Will you give your full name?

A. Davide Veronesi.

Q. And where do you reside?

A. In Bologna, Italy.

Q. What is your street address?

A. Via Rivabella number 5.

Q. Do you speak and understand English?

A. No.

Q. Where were you born? A. Bologna. [4]

Q. Italy? A. Italy.

Q. Have you studied English at all?

A. No.

Q. Have you been out of Italy before your present trip to the United States? A. No.

Q. Will you briefly outline your education?

A. I attended the elementary schools; the Liceo, which is equivalent to the high school—the scientific—the scientific high school; and the University of Bologna.

Q. What profession did you study while at the University of Bologna? A. Civil engineering.

Q. Does that or does that not include mechanical engineering?

A. Yes, included in civil engineering there are a number of subjects concerning mechanical studies.

Q. What is your father's name? A. Hugo.

Q. Hugo Veronesi? A. Veronesi.

(Deposition of Davide Veronesi.)

Q. What is his address?

A. Via Osservansa number 2.

Q. Of Bologna? A. Of Bologna.

Q. I hand you original letters patent of Italy, No. 260,417, apparently issued to Hugo Veronesi; and I will ask you if the Hugo Veronesi named there is your father?

(Document shown to witness and the counsel.)

A. Yes.

Mr. Bruce: We would like to make a reservation on the record of the right to check this document and to interpose any objections—reserve any objections which we may find after having checked it.

Q. (By Mr. Mellin): Is that the original letters patent? A. Yes. [5]

Mr. Gray: Just a moment. I object to that on the ground that the letters patent are the best evidence.

Mr. Mellin: Well, one moment. I am going to object, on the record. Only one of you are going to object; not both of you. Only one counsel has the right to object; and you will have to make your selection.

Mr. Bruce: For the record, let the record appear that it is perfectly proper for the counsel to object to questions. While only one may interrogate, any number can object. That is the rule.

(Deposition of Davide Veronesi.)

Q. (By Mr. Mellin): And where did you obtain this original letters patent? A. Rome.

Mr. Mellin: May that be marked for identification as——

Mr. Candido Jacuzzi: May I make a statement here now? You asked where did he obtain——

Mr. Mellin: Are you counsel, too?

Mr. Bruce: No, he is——

Mr. Jacuzzi: I am trying to check on the language. He did not obtain the patent, but the father did.

Mr. Mellin: I said, “Where did you obtain this original letters patent?” I didn’t ask him about the patent. I asked him about this, and he said from his father.

(Unreported discussion.)

Mr. Mellin: I will ask that the letters patent No. 260,417, just identified by the witness be marked as Defendants’ Exhibit Q. [6]

(Letters patent No. 260,417, issued to Hugo Veronesi, marked “Defendants’ Exhibit Q.”)

Mr. Bruce: At this time I would like to note an objection to the taking of this deposition one week preceding trial, and to the offer of any proof as to any circumstances of prior knowledge and use for the purpose of anticipating or invalidating the patents in suit, or either of them, upon the ground that the defendants have failed to give the notice required by Section 4920 of the Revised Statutes of the United States.

(Deposition of Davide Veronesi.)

Q. (By Mr. Mellin): I hand you what appears to be original letters patent No. 139,161, of Italy, which was issued apparently to Hugo Veronesi; and ask you if that Hugo Veronesi named there is your father?

(Document handed to counsel and to witness.)

Mr. Bruce: We specifically make the objection to any testimony respecting this patent 139,161, upon the grounds previously stated.

Mr. Mellin: Read the question to the witness.

(Question read by reporter.)

A. Hugo Veronesi is my father.

Q. And that is the Hugo Veronesi named in this patent? A. Yes.

Q. Where did you get this particular document?

A. From the records of the company.

Q. What company?

A. From the Veronesi Company.

Mr. Mellin: I will ask that the notary mark that for identification as Defendants' Exhibit R.

Mr. Bruce: May it be stipulated that our objection goes to the testimony relative to that patent, Mr. Mellin?

Mr. Mellin: I don't know of any objection you can make; but if you want, it is all right with me.

Mr. Gray: What number did you give that?

Mr. Mellin: "R."

Q. And that is the original Italian patent, is it?

(Deposition of Davide Veronesi.)

Mr. Gray: That is objected to as calling for the opinion and conclusion of the witness.

Q. (By Mr. Mellin): That is the original Italian patent? A. Yes.

Q. As distinguished from a copy? Ask him that. Tell him to answer it "Yes" or "No."

A. It is the original document.

Q. Do you know what business your father, Hugo Veronesi, was in in 1928?

Mr. Bruce: Objected to—

Mr. Mellin: Wait until the question gets to him.

Mr. Bruce: Oh, I have a right to object.

Mr. Mellin: Oh, certainly you have.

Mr. Bruce: Without being held up.

Mr. Mellin: It would help if we could get the question to him, and then you can object to it before he answers.

The Interpreter: What was the question?

Mr. Mellin: You see, we have to do it all over again. [8]

(Question read by reporter.)

A. He had a firm which constructed pumps.

Q. What was the name of that firm at that time?

A. Costruzioni Elettromeccaniche Hugo Veronesi.

Q. Will you state whether you are connected with that company at this time?

A. No, he says that firm was dissolved, and was ceded to me in 1933.

Q. Did you or did you not become the owner

(Deposition of Davide Veronesi.)

of that firm in 1933? A. Yes, I became the owner.

Q. In 1933? A. In 1933.

Q. By the way, what is your age?

A. 38 years old.

Q. When did you graduate from the University of Bologna? A. In 1936.

Q. Did he or did he not have any duties or have any association with that firm during the years he was going to the University of Bologna?

A. Yes.

Q. Will you explain what you did there while you were going to the University of Bologna?

A. My duties were drafting; I assisted in sales; I was shop manager.

Q. Prior to 1933, did he have any connection with that firm as an employee or worked for his father?

A. I used to go to the factory, and I saw what was being manufactured, and I knew what was being manufactured.

Q. Was your father the owner of that business you named [9] prior to 1933? A. Yes.

Q. How long, if he knows of his own knowledge, was his father in that business of making pumps prior to 1936?

A. He made his first experiment in pumps in 1912.

Q. And did he manufacture pumps continuously thereafter, or not?

(Deposition of Davide Veronesi.)

A. He continued manufacturing pumps until 1939.

Q. Was that continuously during that period, or was it interrupted at any time?

A. There was an interruption during the first world war.

Q. And what happened in 1939?

A. We quit completely the manufacture of pumps in 1939.

Q. Who managed the business that he named a while ago after it was ceded to him in 1933—did he say 1933? A. 1933.

Q. Who managed the business from then on?

A. I was. I did.

Q. Is that company still in existence?

A. Yes, now up to this time.

Q. And what do they manufacture now?

A. Filter presses and centrifugal separators.

Mr. Gray: Centrifugal separators?

Mr. Mellin: Yes.

Q. And what type of pumps did they manufacture from 1933 to 1939?

Mr. Bruce: Just a moment. I object to that because, in [10] accordance with the testimony, he said that they manufactured filter presses and centrifugal separators.

Mr. Mellin: After—

Mr. Gray: No, the question was between 1933 and 1939, wasn't it?

Mr. Mellin: That's right.

(Deposition of Davide Veronesi.)

Q. What was the answer?

A. Eureka Pumps.

Q. And what type of pumps are those?

A. They are jet—they are pumps with jets.

Q. For pumping what?

A. Pumping water.

Q. Out of wells, or otherwise?

A. From wells.

Q. Was the name of the Veronesi Company that you referred to a moment ago changed at any time?

A. It was changed in 1933, when I became the titular owner.

Q. What was the name of it before 1933?

A. Costruzioni Elettromeccaniche Hugo Veronesi.

Mr. Gray: You might refer to the one before 1933 as Veronesi No. 1, and refer to Veronesi No. 2 as the one after 1933, for our convenience.

Mr. Mellin: All right. It may be so stipulated that we can refer to them that way.

Q. What was the name of the company after you took it over?

A. Costruzioni Elettromeccaniche Veronesi.

(By Mr. Mellin): So the last one we will know as Veronesi Company No. 2.

Mr. Gray: That is right. That will make it easier. [11]

Mr. Mellin: May the interpreter explain to him how we are going to call them?

Mr. Bruce: Yes.

(Unreported discussion.)

(Deposition of Davide Veronesi.)

Q. (By Mr. Mellin): In 1936, did you or did you not spend full time in connection with the business of Veronesi No. 2? A. Completely.

Q. And you are still so interested in the company?

A. Yes, up to this time and today also I am completely interested in the company.

Q. What was the address, the street address, of Veronesi No. 2 in 1936?

A. Via Pietramelara number 4.

Q. Did they move the company from that address at any time after 1936?

A. In '39, the factory was moved from the address just given to Via Franco Bolognese number 4.

Q. That was in what year? A. 1934.

Q. Nineteen thirty what? A. 1939. 1939.

Q. Did they move the factory again after that?

A. No.

Mr. Gray: Mr. Mellin, you have handed me what appears to be a publication, which appears to be printed in Italian. Do you have a translation from the Italian into English of that that you can let us have?

Mr. Mellin: I think I have one. If I have two, I will give you one. [12]

Mr. Gray: I mean, could you let us look at one now?

Mr. Bruce: Did you have that translation?

(Mr. Mellin hands document to counsel.)

(Deposition of Davide Veronesi.)

Mr. Gray: Thank you.

Mr. Mellin: I am just loaning it to you, because it is the only one I have.

(Unreported discussion.)

Q. (By Mr. Mellin): I hand you a four-page printed instrument entitled "Pumpe Eureka," and ask you if you can identify it? A. Yes.

Q. And will you tell us what it is, please?

Mr. Bruce: That is objected to as incompetent. It shows what it is on its face.

Q. (By Mr. Mellin): Will you tell us what it is, please?

A. It is the catalog of the Eureka Pump.

Q. And is that a catalog of the Veronesi Company No. 2 or No. 1? A. No. 1.

Mr. Bruce: Just a moment: We will object to any testimony here as incompetent, irrelevant, and not having been noticed under the provisions of Section 4920, Revised Statutes.

Q. (By Mr. Mellin): Do you know if this catalog was used or not used by the Veronesi No. 2?

A. It was also used by Veronesi No. 2.

Mr. Mellin: May I ask the notary to mark the catalog just identified by the witness for identification as Defendants' Exhibit S? [13]

(Catalog entitled "Pumpe Eureka," marked "Defendants' Exhibit S.")

Q. (By Mr. Mellin): Do you know when the catalog Exhibit S was printed?

(Deposition of Davide Veronesi.)

Mr. Bruce: The same objection to all this testimony, Mr. Mellin.

Mr. Gray: May we have the stipulation that it is deemed objected to, and then you can proceed without interruption?

Mr. Mellin: Yes, I thought we made the stipulation that all objections as to the materiality and relevancy could be held back until the time of trial, except as to the form of the question.

Mr. Gray: And would that also apply to any application of the statute, whether it is 4920 or otherwise?

Mr. Bruce: That is right, 4920, R. S.

Mr. Gray: It includes all legal objections, except as to the form of the question?

Mr. Mellin: Yes.

Mr. Gray: In that way we won't interrupt you.

Mr. Mellin: Will you read the question?

(Record read by reporter.)

A. The answer was 1927 or 1928.

Q. (By Mr. Mellin): When did it first come to your attention? A. About 1930.

Q. Does he know what those catalogs, Exhibit S, were used for by either Veronesi No. 1 or Veronesi No. 2? [14] A. For advertising.

Q. For advertising? A. Yes.

Q. Were or were not they distributed to customers and prospective customers?

A. These were given to customers.

Q. And did he personally have anything to do

(Deposition of Davide Veronesi.)

with either giving them to customers or distributing them to customers? A. Yes.

Q. During what period?

A. From 1933 to 1936 and 1937.

Q. And how many did he so distribute or give to customers?

A. Myself personally, about 150.

Q. How were they given to customers? I mean, handed to them or distributed to them in some other way?

A. Either—they were distributed either by hand or sent through the mail.

Q. Is that a catalog of the Eureka Pump or the Pompe Eureka, or whatever it is that you mentioned a moment ago that was the product of the Veronesi No. 1 and the Veronesi No. 2? A. Yes.

Mr. Bruce: Have you an extra copy of that, Mr. Mellin?

Mr. Mellin: I think I have. I will have to hunt through a lot of stuff. I will give you a copy of this, and I will give you a copy of the translation. We will have that before the day is over. Some of them I have copies of and some I haven't. I will give you what I have. I may have all of them.

Q. I hand you what appears to be a pamphlet or catalog [15] entitled "Hugo Veronesi, Bologna, Pompe Eureka," and ask you if you can identify it.

A. Yes.

Q. And what is that?

A. It is a catalog of the Eureka Pump.

(Deposition of Davide Veronesi.)

Q. And was that catalog used or not by Veronesi No. 1 and Veronesi No. 2, or either of them?

A. Yes, by—yes.

Mr. Bruce: “Yes” what?

Mr. Mellin: Yes—“Yes” what? By Veronesi No. 1? A. Yes, used by both companies.

Q. And is that a catalog of the Pompe Eureka that he testified to as manufactured by both Veronesi No. 1 and Veronesi No. 2? A. Yes.

Q. And does he know when that catalog was printed? Do you know when that catalog was printed? A. In 1928.

Mr. Mellin: The catalog identified by the witness I ask the notary to mark for identification as Defendants’ Exhibit T.

(Catalog entitled “Hugo Veronesi, Bologna, Pompe Eureka,” marked “Defendants’ Exhibit T.”)

Mr. Bruce: Have you a photostat of that, Mr. Mellin?

Mr. Mellin: I may have a copy of it. We can figure out at the end of the day what you will need in the way of copies.

Mr. Bruce: Yes.

Q. (By Mr. Mellin): I notice the address of Hugo Veronesi, Bologna, given here as Via Nuova Fuori Mascarella number 21. [16] When did they move from that address, if they did move?

A. From this address they moved to Via Pietramelara number 4.

(Deposition of Davide Veronesi.)

Q. And when was that move effected?

A. In 1923.

Q. They moved from what address in 1923? This one? (Indicating.)

A. From Via Nuova Fuori Mascarella to Via Pietramelara.

Q. When were these printed? A. In 1928.

Q. Can you explain why they used this same address that they moved from in 1923, in 1928, as I understood your testimony? We must be crossed up. As I understood the testimony this was printed in 1928. Is that correct? A. Yes.

Q. Were they located at this address in 1928?

A. Yes, we were at that address.

Q. When did they move to that address?

The Interpreter: To this address (indicating on catalog)?

Mr. Mellin: Yes. A. 1923.

Q. What year, then—do you know what was done with these catalogs, Defendants' Exhibit T?

A. For advertising.

Q. How were they used for advertising?

A. They were distributed by hand or through the mail to customers.

Q. Of his own personal knowledge how many were distributed to customers in that fashion?

A. Oh, about a hundred. [17]

Q. I call your attention to patent—Italian patent No. 260,417. Do you know the construction and mode of operation of the pump as illustrated in that patent? A. Yes.

(Deposition of Davide Veronesi.)

Q. I call your attention to Exhibit P for identification and ask you to completely disregard the marks in red, and ask you to compare that drawing with the drawing of the patent and tell me if it is the same except difference in size?

A. Yes, it is the same.

Q. Referring to Exhibit P, where does the—what is the part marked Exhibit 9—No. 9?

A. The part No. 9 is the element that sends the water to discharge.

Q. How many stages of pump are shown in Exhibit P, centrifugal?

A. Three phases—three stages.

Q. What is the path of the water that discharges through 9?

The Interpreter: Do you want to indicate the passages?

Mr. Mellin: Well, he can tell us.

A. In the No. 9 there is a discharge, a part of the water discharged goes through No. 9 and the remaining part of the water continues in its successive stages to the jet.

Q. And does the water that discharges through 9 go through all three stages?

A. No. Part of the water goes through 9 and part continues to the other stages.

Q. Does the part that goes through 9 ever go through the [18] other stages? A. No.

Q. Does Exhibit P accurately—strike that. Does the drawing Exhibit P, except for figures, disre-

(Deposition of Davide Veronesi.)

garding figure 3, accurately or inaccurately illustrate Pompe Eureka?

A. It shows how the Pompe Eureka is made, accurately.

Mr. Mellin: Here is a drawing I will ask the notary to mark for identification as "F-A."

(Said drawing marked "Defendants' Exhibit F-A," and later changed to "F-1," and by stipulation of counsel again changed to "P-1.")

Mr. Mellin: I show you a drawing marked for identification "F-A." Does that or does that not accurately illustrate diagrammatically the Pompe Eureka?

A. Yes, it shows it accurately.

Q. Is that drawing—does that drawing F-A for identification illustrate the same or a different construction of centrifugal pump than Exhibit P?

A. It is the same identical pump drawing.

Q. Is that drawing Exhibit F-A for identification the same or different in construction, different from the construction of the Pompe Eureka which we have been discussing? A. Yes, the same.

Q. Calling his attention to the arrows—calling your attention to the arrows in Exhibit F-A, do they correctly or incorrectly show the path of fluid of the Pompe Eureka? A. Yes. [19]

Mr. Gray: Just ask the question one way. That is all right.

Q. (By Mr. Mellin): Does that correctly show the fluid cycle of the Pompe Eureka? A. Yes.

(Deposition of Davide Veronesi.)

Q. Now, I show you Exhibit T, and I call your attention to the picture or illustration on the first page thereof, and ask you if that illustration shows a pump, from its face, of more than one stage?

A. Yes, it shows more.

Q. How many stages? A. Four stages.

Q. Will you mark the stages with a lead line, one, two, three, on Exhibit T?

The Interpreter: There are four stages there, so mark four.

Mr. Mellin: Four stages. Then mark four—mark them one, two, three and four.

(The witness marks on Exhibit T.)

Q. (By Mr. Mellin): O. K. Now, does the pipe which I mark five—what is that? Where does that come from? A. From the first stage.

Q. And is that the one marked “1”?

A. Yes, it belongs to the first stage.

Q. Is that the same or different than the part marked “9” on Exhibit P?

A. It is the same, only that this is a three-stage pump, and that is a four-stage pump (indicating).

Q. O. K. And I mark a pipe “6.” What is that pipe? [20]

A. It is the tube that conducts the water to the jet.

Q. And where does tube “6” get its water?

A. The tube No. 6 gets its water from the fourth stage.

Q. I call your attention to the last page of Ex-

(Deposition of Davide Veronesi.)

hibit T. How many stages is that, if it is more than one?

A. It has more than one stage. It has three stages.

Q. Will you mark the stages one, two, and three, please?

(The witness marks as requested.)

Q. And I mark a pipe "5" and ask what is that pipe? A. It is a discharge tube.

Q. And where does it get its water?

A. From the first stage.

Q. I mark a tube "6." What is that tube?

A. It is a tube that conducts the water to the jet.

Q. And that jet is at "7" here. A. Yes.

Q. And where does the tube "6" get its water?

A. From stage number three.

Mr. Mellin: Let's take a five-minute recess.

(Short recess.)

Mr. Mellin: I identified the drawing, the large drawing to which the witness testified, as Defendants' Exhibit F-A. May it be stipulated that that can be changed to F-1 for identification?

Mr. Gray: So stipulated.

Mr. Mellin: All right. Let's make it P-1 instead of F-1. Is that satisfactory? [21]

Mr. Gray: Yes.

Mr. Bruce: That is agreeable.

(Said drawing re-marked "Defendants' Exhibit P-1.")

(Deposition of Davide Veronesi.)

Q. (By Mr. Mellin): I call your attention to an assembled pump casing, which I ask the notary to mark for identification as Defendants' Exhibit U-1. Do you know where that assembled pump casing came from? A. From the Veronesi factory.

Q. And when were the parts of that casing other than the bolts made, if you know? A. In 1937.

Q. And were those parts ever in use?

A. No.

Q. Are they the same or different from the parts from which the Pompe Eureka was made?

A. They are the same parts as used in the construction of the Eureka Pump.

Q. That is, the same in design and construction?

A. Yes.

Q. And when were those parts put together in the fashion they are now put together, other than being cut away?

A. They were put together from old parts just before I left.

Q. Well, you mean by "I left," when you left Italy to come over here? A. Yes.

Q. And if he knows, who cut the chunk out of it.

(The interpreter speaks with the witness.)

The Interpreter: He thinks it has been done by the [22] Berkeley firm.

Q. (By Mr. Mellin): He had no part in that?

A. No.

Q. Comparing the pump casing Exhibit U-1 with the drawing of the centrifugal pump "P," is the

(Deposition of Davide Veronesi.)

casing on the drawing the same as the pump casing U-1 or different? A. There is no difference.

Q. Does the drawing Exhibit P accurately or inaccurately illustrate the pump casing U-1?

A. Yes, completely and accurately.

Q. And will you look at the part that was cut away and tell us if that is the missing part—the cut-away part of the casing U-1?

Mr. Bruce: Pardon me. There was so much noise I didn't hear the question.

Mr. Mellin: I just asked him, is the part marked for identification U-2 the part that was cut away from the casing U-1?

Mr. Gray: It is stipulated that it was.

Mr. Mellin: All right.

Q. Now, from 1936 to the present who was in charge of the records of Veronesi No. 2?

A. Me.

Q. With reference to the pump casing U-1, when were the patterns—do you know when the patterns were made for those castings?

The interpreter: For the castings? [23]

Mr. Mellin: Yes.

A. I believe my father had them made in either 1920 or 1921.

Q. Was the Pompe Eureka pump design changed at any time? Was it changed from 1933 to 1939 from the construction of design shown in U-2?

A. No, no change.

Mr. Bruce: What date was that?

Mr. Mellin: I asked from 1933.

(Deposition of Davide Veronesi.)

Mr. Gray: After 1933.

Mr. Bruce: All right.

Q. (By Mr. Mellin): And the catalogs Exhibits S and T, were they taken from the records of Veronesi No. 2 or not?

The Interpreter: These publications (indicating)?

Mr. Mellin: Yes.

A. They were taken from the archives of Veronesi No. 2.

Q. Was the discharge to service always located at the first stage— Just strike that.

Were any Pompe Eureka's made which had but one discharge? A. No.

Q. Did they make centrifugal pumps other than Pompe Eureka?

The Interpreter: Centrifugal?

Mr. Mellin: Yes.

A. No.

Q. Did they separately make a centrifugal pump? I think we have got that question confused. [24]

A. They manufactured centrifugal pumps, the ordinary centrifugal pumps for normal uses, with one suction port and one discharge port.

Q. Were they called Pompe Eureka?

A. No, they were not.

Q. Did they make different combinations of two discharges in Pompe Eureka?

The Interpreter: A combination of discharges?

Mr. Mellin: Different combinations of discharges.

(Deposition of Davide Veronesi.)

A. They made pumps whereby the discharge would be in different positions.

Q. I show you a Pompe Eureka on Exhibit S. Where is the discharge to the jet on that pump, if it has a discharge to the jet?

Would you mark that——

Mr. Gray: You can mark it.

Q. (By Mr. Mellin): Is that the one I marked "2," discharge to the jet? A. Yes.

Q. And how many stages is that pump?

A. Four stages.

Q. And the one I mark "1" is the first stage or not? A. Yes.

Q. And the one I mark "1-A" is what stage?

A. The second stage.

Q. And the one I mark "1-B"?

A. The third stage.

Q. And the one I mark—am I going to mark it?

Mr. Gray: That is not a stage, is it? [25]

Q. (By Mr. Mellin): The one I mark—is that a stage (indicating)? A. The fourth stage.

Mr. Mellin: That is "1-C."

Q. And what I mark No. 3—is that a discharge or an inlet? A. Discharge.

Q. And that is at the last or fourth stage?

A. The last stage. It comes from the last stage.

Q. And that is to service?

A. This one, yes.

Q. And No. 3 is to service—to use?

A. Yes.

Q. And the connection I mark "4," suction?

(Deposition of Davide Veronesi.)

A. Yes, suction.

Q. All right. Now, I call your attention to the illustration on the second page of Exhibit S. Is that the same or different from the illustration on the second page—on the last page of Exhibit T?

A. The same.

Q. The same illustration? A. Yes.

Q. Of the same pump? A. Yes.

Q. How many stages — what is the maximum number of stages they used in Pompe Eureka, if he knows?

A. I believe we arrived in making pumps of eighteen stages.

Q. And were all Pompe Eureka pumps made laminated—that is, by laminated meaning each stage being separate, a separate lamination?

The Interpreter: Now, lamination — is that a quality of the manufacturer? [26]

Mr. Mellin: No. It is each stage made as a separate unit. Ask him if each stage was or was not always made as a unit—each pump stage or section?

(The interpreter speaks with the witness.)

The Interpreter: He says each stage was made in such a manner that they could be interchangeable.

Q. (By Mr. Mellin): And added to or subtracted from? A. Yes.

Q. So as to make different numbers?

A. Yes.

Q. So pumps of more than two stages just meant adding additional elements or assemblies—may I strike the question?

(Deposition of Davide Veronesi.)

Mr. Bruce: That would be true in any case.

Mr. Mellin: Yes.

Q. Does the drawing Exhibit P show it made in the manner he just described? A. Yes.

Q. You handed me on your arrival in the United States a drawing which is labeled "Dis. 1317, Hugo Veronesi," and it has a date in its lower right-hand corner of "Bologna, 1926." What is the purpose of that drawing?

A. This is furnished to the clients as an aid to installation as to the height and the space displaced and occupied by the machine.

Q. And where did he obtain that drawing?

A. From the records of the firm.

Q. And when did that come into his possession for the first time, if he knows?

A. When I became the titular owner [27] of the plant this was in the archives and came to me in that way.

Q. And that was in 1933? A. In 1933.

Q. Was that drawing itself furnished to customers, or reproductions of it?

A. Blueprints made of this design were furnished to the customers.

Q. And did he furnish any such blueprints to customers? A. Yes.

Q. How many? A. Oh, around ten.

Mr. Mellin: I will ask the notary to mark that drawing the next in order for identification.

(Said drawing marked "Defendants' Exhibit V.")

(Deposition of Davide Veronesi.)

Q. (By Mr. Mellin): Calling your attention to Exhibit V, and particularly to arrows thereon, what do those arrows indicate?

A. The arrows point to the course of the water to the discharge and to the jet.

Q. You handed me a drawing labeled "Pompe Centrifuga," I guess it is, dated in 1928. Where did you obtain that drawing?

A. In 1923 when I became the titular owner of the firm.

Mr. Bruce: 1923 or 1933?

The Interpreter: 1933.

Q. (By Mr. Mellin): Is this drawing an accurate drawing of various sections of pumps made by Veronesi No. 1 and Veronesi No. 2? A. Yes.

Q. This only has two discharges—I beg your pardon. I [28] am misstating it. This only has one discharge as shown on this drawing. A. Yes.

Q. Did you attempt to locate a separate drawing of an intermediate discharge?

A. Yes, but we haven't any drawings showing the intermediate discharge.

Q. Did he ever have drawings showing them?

A. No.

Q. How was that intermediate discharge section made?

A. It was a piece attached with an outlet that could be placed in between.

Q. With intermediate outlets?

A. With intermediate position.

(Deposition of Davide Veronesi.)

Mr. Bruce: Are you identifying that drawing?

Mr. Mellin: Yes, I am going to offer in evidence the drawing referred to by the witness—I will ask it be marked for identification next in order. This is a drawing labeled, "Pompe Centrifuga, 1926," the drawing being identified by the number—

Mr. Bruce: 1928, rather than 1926, isn't it?

Mr. Millin: Yes, I beg your pardon. The drawing being identified by number, apparently No. Dis. 256.

(Drawing entitled "Pompe Centrifuga, 1928," marked "Defendants' Exhibit W.")

Q. (By Mr. Mellin): I show you a drawing just handed me, which is numbered "Dis."—this is "Nr. 313," dated 18/4/38, and ask you if that is a drawing of an intermediate discharge section [29] of a pump?

Mr. Bruce: Mr. Mellin, May I see that a moment?

Mr. Mellin: Yes.

Mr. Bruce: All right. Thank you.

Q. (By Mr. Mellin): And I will ask you if that is a drawing of an intermediate discharge section?

A. Yes.

Q. I notice it has volute vanes on it, or blades. Did the Pompe Eureka have volute vanes or vanes?

The Interpreter: Volute or involute?

Mr. Mellin: Well, call them curved.

A. Normally this pump was manufactured with the straight vanes, but this pump made according to

(Deposition of Davide Veronesi.)

this—we only made one pump designed according to this drawing.

Q. And that had curved vanes? A. Yes.

Q. Did you search for a drawing of an intermediate discharge section like this with straight vanes to bring here or not?

(The interpreter speaks with the witness.)

The Interpreter: He looked for them, but he couldn't find them because they were destroyed.

Q. (By Mr. Mellin): Ask him to explain the manner in which they were destroyed or lost, whatever it was.

A. The factory was bombarded during the war. The place was left open, and anybody could have entered and probably picked anything up they wanted. After that bombardment the [30] place was, as I understand, abandoned, and it was open to anybody to enter.

Q. And some records were lost? Were some records lost or not?

A. We lost documents and copies of—invoice copies, invoice registers.

Q. And drawings? A. And drawings.

Q. Other than the fact that the vanes are curved, does this accurately illustrate a part of Pompe Eureka?

A. This drawing represents the intermediate discharge stage of a Eureka Pump.

Q. Other than the curved vanes?

A. Other than the curved vanes.

(Deposition of Davide Veronesi.)

Mr. Mellin: I will ask this be marked for identification next in order.

(Drawing, Nr. 313, dated 18/4/38, marked "Defendants' Exhibit X.")

Q. (By Mr. Mellin): You handed me a drawing which is labeled, "Pompe Centrifuga Eureka," which is dated in the lower right-hand corner, 8/12/1923. Where did you obtain that drawing?

A. From the company's records.

Q. And when did that come into his possession?

A. When I became the legal titular owner of the firm.

Q. In 1933? A. 1933.

Q. And it has been in your possession ever since?

A. Yes.

Q. I notice that that has one, two, three, four stages. [31] Is that correct?

A. It has four stages.

Q. Other than the four stages is there any difference between the pump there shown and the pump illustrated in Exhibit P-1—either "P" or "P-1"?

A. No difference.

Q. Where did the discharges come off there?

A. From the first stage.

Q. And was there more than one discharge?

A. There was another discharge leading to the jet.

Q. Is that the one indicated in dotted lines on the drawing?

A. From the fourth stage the water was con-

(Deposition of Davide Veronesi.)

ducted along the pipe indicated by the dotted line to the jet.

Mr. Mellin: I ask that this drawing be marked for identification next in order.

(Drawing entitled "Pompe Centrifuga Eureka," dated 8/12/1923, marked "Defendants' Exhibit Y.")

Q. (By Mr. Mellin): Were any changes made, to your knowledge, on Exhibit Y for identification after the exhibit came into your possession?

A. None, no.

Q. I hand you three drawings numbered Dis. 1510, 1511 and 1512, which you handed me, and ask you where you obtained those drawings?

A. From the company's records.

Q. And when did they come into your possession? [32]

A. In 1933.

Q. Do they illustrate installations of Pompe Eureka pumps or not?

A. Yes. They were designs given to the customers to take off measurement for space required, and showing the function of the pump.

Q. The blank spaces that I point to, which are in solid black—what are those for?

A. This black mark was blocked out for the purpose of reproducing a white space on the blueprint so the numbers could be written in in the white space on the blueprint.

Q. And were there more than one of each of

(Deposition of Davide Veronesi.)

these or not? Were any of these furnished to customers, any of those particular reproductions?

A. Yes, they were furnished to the clients.

Q. Did he personally ever furnish any prints of these drawings to clients?

A. Yes, some I furnished, but not many.

Mr. Mellin: I offer those three drawings as our next exhibit in order for identification.

Mr. Bruce: Maybe you had better mark them with numbers also in order to identify them.

(Drawings numbered Dis. 1510, 1511 and 1512, marked "Defendants' Exhibits Z-1, Z-2, and Z-3 for identification.")

Q. (By Mr. Mellin): I hand you a drawing numbered Dis. 1459, and ask you where you obtained that. You handed it to me.

A. From the company records. [33]

Q. And how long has that been in your possession?

A. From 1933.

Q. Does that show an installation of the Pompe Eureka?

A. Yes.

Q. For a particular customer or not?

A. No, this is not for a particular client. This could have been used for more than one—for several customers.

Q. What was this drawing used for?

A. This shows an installation of a pump with a storage tank and connected up with electric power with an automatic switch.

Q. And what was the drawing itself used for?

(Deposition of Davide Veronesi.)

A. To exhibit it as a mode of installation to several customers.

Q. Were or were not the customers given copies?

A. Yes.

Q. By him personally?

A. Also by me personally.

Q. How many? A. Five or six.

Q. When?

A. In 1935 or '36—about those years.

Q. Did Veronesi No. 2 manufacture or sell any Pompe Eureka pumps after 1939? A. No.

Q. At that time did they go out of the pump business?

A. We had quit manufacturing any pumps, completely.

Q. How many stages are shown in that drawing you were just looking at? A. Two stages.

Q. From what stage is the discharge to the tank? [34]

A. From the first stage.

Q. And where is the discharge to the jet?

A. In the second stage.

Mr. Mellin: May I have that drawing marked for identification next in order?

(Drawing numbered Dis. 1459, marked "Defendants' Exhibit AA for identification.")

Q. (By Mr. Mellin): I hand you what appears to be a filing receipt for a patent application, stating, "Applicant, Veronesi, Hugo, Bologna, Italy; invention, devices for raising liquids"; addressed to

(Deposition of Davide Veronesi.)

Marks & Clerk, 715 "G" Street, N. W., Washington, D. C., serial No. 467053, series of 1925; filing date July 10th, 1930—

Mr. Bruce: July 10th?

Mr. Mellin: Yes, July 10th, 1930.

Mr. Bruce: 1930. All right.

Q. (By Mr. Mellin): And I ask you, is the Hugo Veronesi mentioned therein your father?

A. Yes.

Q. And where did you obtain this filing receipt? You handed it to me yesterday.

A. This was given to me by my father before I left Italy, to show what the receipt reflects.

Mr. Mellin: May I have that marked for identification next in order?

(Filing receipt for patent application marked "Defendants' Exhibit BB for identification.")

Q. You handed me yesterday a book which bears on the front the date of 18/11/1933, and has some other figures on it. Will you tell us what that is, please?

A. This is a copy book wherein all invoices were copied.

Q. All invoice of Veronesi—

A. Of Veronesi, yes—of the Veronesi Company No. 2.

Q. No. 2. And I notice—did you place all those papers into that book? A. Yes.

Q. And what do those pages indicate that are marked by those little pieces of paper?

(Deposition of Davide Veronesi.)

A. The signs indicate the pages upon which there is a copy of an invoice of a Eureka Pump.

Q. An invoice of a sale of a Eureka Pump?

A. Yes.

Q. By Veronesi? A. By Veronesi No. 2.

Q. And the invoice appearing on page 30 is a copy of such an invoice? Ask him if each page that I refer to and identify by number in the upper right-hand corner—do I understand correctly that each of such pages is an invoice for a Eureka Pump by Veronesi? A. Yes.

Q. Page 30, page 34, page 36, pages 45 and 46, page 57, 61, 68, 76, 90, 92, 93, 94, 129, 135, 143, 145, 156, 173, 216, 217, 262, 337, 349, 356, 370.

Each of those pages that I showed you and called out are numbered invoices for sales of Pompe Eureka by Veronesi? [36] A. Yes.

Q. I notice these records are only from 1933 to 1939. Did you have any other sales records like that?

A. There were sales previous to 1933 also.

Q. What became of the records?

A. They were lost also.

Mr. Mellin: I offer the book produced by the witness for identification as defendants' exhibit next in order, but just as to those pages which I referred to, and I ask the notary to so mark it.

(Book entitled "Copia Delle Fatture, dal 18/11/1933 al 11/9/39," marked "Defendants' Exhibit CC for identification.")

Mr. Mellin: That closes my examination.

(Thereupon, at 12:45 p.m., Tuesday, May 3rd, 1949, an adjournment was taken until 2:00 o'clock p.m. of said day, and by consent of counsel to be resumed at the same place.) [37]

Office of Messrs. Mellin and Hanscom,
Suite 500, 391 Sutter Street,
San Francisco, California,

Tuesday, May 3rd, 1949, 2:25 o'Clock P.M.

(Pursuant to the foregoing adjournment, at the above time and place the following proceedings were had; there being the same appearances as hereinbefore noted.)

Mr. Gray: Do we have an understanding as to whether we are going to get all of these things, a copy of the things that you have introduced?

Mr. Mellin: We have no copies of a drawing except I may have a small one like the other. If we have them, you can have a copy; otherwise you can have copies made.

Mr. Gray: All right. You will either furnish us with copies of all of the exhibits you have offered for identification or——

Mr. Mellin: Or we will give it to the notary, and he will reproduce it for you.

Mr. Gray: In that way we will get them in one way or the other?

Mr. Mellin: That is right. When you are ready, I have to ask one question on that patent up there. When you are ready, we will go.

Mr. Gray: With relation to 260,417? [38]

Mr. Mellin: Yes. All set?

Mr. Bruce: Go ahead.

DAVIDE VERONESI

recalled as a witness, having been previously duly cautioned and sworn by the notary public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination (Resumed)

By Mr. Mellin:

Q. In taking your testimony this morning, you were asked where you obtained the document I have as "Q"; and you answered Rome. Do you wish to correct that statement?

A. He said he replied Rome because the patent office is in Rome; and the patent really came from Rome; but he has had this document in his company records as long as the patent was issued; and before coming to America, he took this document from the company records.

Mr. Mellin: That is all. Then "this document" refers to Exhibit for identification Q, Patent No. 260,417.

The Witness: Yes.

Mr. Bruce: Your testimony in chief is closed?

Mr. Mellin: Yes.

Mr. Bruce: We discussed this morning about the matter of holding the witness over for signature to his deposition.

Mr. Mellin: Yes. [39]

(Deposition of Davide Veronesi.)

Mr. Bruce: And I really think there is no need of that; so we will stipulate that it may be——

Mr. Mellin: The signing waived?

Mr. Bruce: The signing may be waived.

Mr. Mellin: Yes.

Mr. Bruce: All right. Now, we have considered the testimony given here; and we feel that such testimony is incompetent, irrelevant and immaterial; and we feel that our objections made this morning are sound; and we do not desire to cross-examine.

Mr. Mellin: No further questions.

/s/ JAY DAVIDE VERONESI.

State of California,

Northern District of California,

City and County of San Francisco—ss.

I hereby certify that on Tuesday, the 3rd day of May, 1949, commencing at 10:00 o'clock a.m., before me, Violet Neuenburg, a notary public in and for the City and County of San Francisco, State of California, at the office of Messrs. Mellin and Hanseom, Suite 500, 391 Sutter Street, San Francisco, California, personally appeared pursuant to Notice of Taking Deposition, hereto annexed, Davide Veronesi, a witness called on behalf of the defendants herein; and Charles O. Bruce, Esquire, and Nathan G. Gray, Esquire, appeared as attorneys for the plaintiff; and Messrs. Mellin and Hanseom, represented by Oscar A. Mellin, Esquire, and Jack E. Hursh, Esquire, appeared as attorneys for the de-

endants; and the said Davide Veronesi being by me first duly cautioned and sworn, through the interpreter, Camillo Marzo, to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

And I further certify that the said deposition was then and there recorded stenographically by Harold H. Hart and R. R. Roberson, competent official and disinterested shorthand reporters, appointed by me for that purpose and acting under my direction and personal supervision, and was transcribed by them; and I further certify that at the conclusion of the taking of said deposition, and when the testimony of said [41] witness was fully transcribed, said deposition was submitted to the said witness and was interpreted to the said witness by said interpreter, Camillo Marzo, and being by the witness in that manner read was corrected and signed by him in my presence; and I further certify that the deposition is a true record of the testimony given by the said witness.

And I further certify that the said deposition has been retained by me for the purpose of securely sealing it in an envelope and directing the same to the clerk of the court as required by law.

And I further certify that I am not of counsel or attorney for either or any of the parties, nor am I interested in the event of the cause; I further certify that I am not a relative or employee of or attorney or counsel for either or any of the parties, nor a

relative or employee of such attorney or counsel, nor financially interested in the action.

In Testimony Whereof, I have hereunto set my hand and official seal at the City and County of San Francisco, State of California, this 5th day of May, A.D. 1949.

/s/ VIOLET NEUENBURG,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 3, 1951.

[Endorsed]: Filed U.S.D.C. May 9, 1949.

[Endorsed]: Filed U.S.C.A. October 18, 1950.

[Endorsed]: No. 12540. United States Court of Appeals for the Ninth Circuit. Jacuzzi Bros., Incorporated, a Corporation, Appellant, vs. Berkeley Pump Company, a Corporation, Berkeley Pump Company, a Partnership, and Fred A. Carpenter, Lana L. Carpenter, F. F. Stadelhofer, Estelle E. Stadelhofer, Jack L. Chambers, Wynnie T. Chambers, Clemens W. Laufenberg and Marie C. Laufenberg, Partners Associated in Business under the Fictitious Name and Style of Berkeley Pump Company, Appellees. Supplemental Transcript of Record. Appeal from the United States District Court, Northern District of California, Southern Division.

Filed October 18, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the Court of Appeals for the Ninth Circuit.

